

# EXHIBIT C

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF TEXAS

3 TEXARKANA DIVISION

4 FALL LINE PATENTS, LLC, ) (

5 PLAINTIFF, ) ( CIVIL ACTION NO.

6 ) ( 5:24-CV-167-RWS

7 VS. ) ( TEXARKANA, TEXAS

8 ) (

9 7-ELEVEN, INC., ) ( MAY 7, 2025

10 DEFENDANT. ) ( 1:59 P.M.

11 MOTIONS HEARING

12 BEFORE THE HONORABLE ROBERT W. SCHROEDER III

13 UNITED STATES DISTRICT JUDGE

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17 Official Court Reporter  
18 Honorable Robert W. Schroeder III  
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25 (Proceedings recorded by mechanical stenography, transcript  
produced on a CAT system.)

01:53:54 1 COURT SECURITY OFFICER: All rise.

01:53:55 2 THE COURT: Please be seated.

01:59:52 3 Ms. Combs, if you would call the case for us.

01:59:56 4 COURTROOM DEPUTY: Cause No. 5:24-CV-167, Fall

02:00:02 5 Line Patents, LLC versus 7-Eleven, Inc., et al.

02:00:05 6 THE COURT: Announcements for the record?

02:00:06 7 MR. ANTONELLI: Good afternoon, Your Honor. Matt  
02:00:10 8 Antonelli for Fall Line Patents. Also with me today is my  
02:00:13 9 colleague, Hannah Price. Ms. Price is going to be making  
02:00:16 10 her first argument in court today.

02:00:19 11 THE COURT: Very good.

02:00:19 12 MR. ANTONELLI: She's going to handle the Iqbal  
02:00:23 13 Twombly motions for us.

02:00:24 14 THE COURT: Very good.

02:00:24 15 MR. ANTONELLI: Thank you, Your Honor.

02:00:25 16 THE COURT: Welcome, Ms. Price.

02:00:27 17 Hello.

02:00:28 18 MS. DEER: Good afternoon, Your Honor. Emily Deer  
02:00:29 19 on behalf of Defendant 7-Eleven.

02:00:30 20 THE COURT: Hi.

02:00:32 21 MR. MUELLER: Your Honor, Jason Mueller on behalf  
02:00:34 22 of Best Buy.

02:00:35 23 THE COURT: Hello, Mr. Mueller.

02:00:37 24 MR. SMITH: And, Your Honor, Michael Smith and  
02:00:40 25 John Hutchins for Defendants Aldi and Sprouts.

02:00:44 1 THE COURT: All right. Good afternoon.

02:00:44 2 MS. HASHEM: Good afternoon, Your Honor. Haleigh  
02:00:47 3 Hashem and Jennifer Doan on behalf of AutoZone.

02:00:51 4 THE COURT: All right. Good afternoon.

02:00:51 5 MR. FINDLAY: Good afternoon, Your Honor.

02:00:51 6 THE COURT: Mr. Findlay.

02:00:53 7 MR. FINDLAY: Eric Findlay on behalf of Advance  
02:00:55 8 Auto Parts and Advance Stores Company.

02:00:56 9 THE COURT: Good.

02:00:56 10 Thanks to all of you for being here. We've got, I  
02:01:01 11 believe, five motions to dismiss that we have set for  
02:01:05 12 argument this afternoon. And I think we've discussed with  
02:01:10 13 the parties about an hour per side is an adequate amount of  
02:01:14 14 time to cover everything that we need to cover this  
02:01:17 15 afternoon.

02:01:19 16 Have you all discussed a way of proceeding --

02:01:22 17 MR. ANTONELLI: We have, Your Honor. We thought  
02:01:24 18 it made sense to do the 101 motions first, which are  
02:01:27 19 identical motions so they can be dealt with together.

02:01:29 20 THE COURT: Okay.

02:01:30 21 MR. ANTONELLI: And then have a session on the  
02:01:32 22 Iqbal Twombly motions which have substantial overlap.

02:01:34 23 THE COURT: Okay. Sound good to everybody on that  
02:01:37 24 side of the table?

02:01:38 25 Okay. Whoever wishes to go forward on the first

02:01:41 1 motion may do so.

02:01:46 2 Ms. Deer?

02:01:52 3 MS. DEER: Good afternoon, Your Honor.

02:01:53 4 THE COURT: Good afternoon.

02:01:55 5 MS. DEER: I have printed copies, as well, for the  
02:02:06 6 Court --

02:02:06 7 THE COURT: Please, yes.

02:02:06 8 MS. DEER: -- if the Court would like.

02:02:08 9 THE COURT: Uh-huh.

02:02:09 10 MS. DEER: All right. Good afternoon, Your Honor.

02:02:25 11 Emily Deer on behalf of Defendant 7-Eleven and the other  
02:02:27 12 Defendants in this case that have joined in 7-Elleven's  
02:02:30 13 motion.

02:02:30 14 Your Honor, we recognize that there is some  
02:02:34 15 history with respect to Section 101 and Claim 7 of the '748  
02:02:38 16 patent. In a prior case --

02:02:39 17 THE COURT: Ms. Deer, I know right away I'm going  
02:02:41 18 to have to slow you down.

02:02:44 19 MS. DEER: Yes, sir.

02:02:44 20 THE COURT: Okay?

02:02:45 21 MS. DEER: Thank you.

02:02:45 22 THE COURT: Thank you.

02:02:45 23 MS. DEER: There's some prior history with respect  
02:02:47 24 to 101 and this claim and prior cases involving Fall Line.  
02:02:51 25 And that specifically is the Zoe's Kitchen case in which a

02:02:56 1 group of Defendants filed a 12(b)(6) motion to dismiss.  
02:03:00 2 And as Your Honor is aware, the Court denied that motion to  
02:03:03 3 dismiss and further denied McDonald's motion for summary  
02:03:08 4 judgment on the issue.

02:03:09 5 However, I'm here today to explain for the Court  
02:03:11 6 why a recent Federal Circuit case, which is the Beteiro  
02:03:14 7 versus Draftkings case that came out in June of 2024,  
02:03:22 8 changes the balance of the analysis here and how it does so  
02:03:22 9 with respect to analogous technology and analogous posture.

02:03:26 10 So let me turn to the Beteiro case and what that  
02:03:30 11 covered.

02:03:31 12 Now, in Beteiro at the District Court, the  
02:03:34 13 representative claim involved exchanging information about  
02:03:37 14 a bet, including the location of a user, and then allowing  
02:03:41 15 or disallowing that bet based on where the user was  
02:03:44 16 located.

02:03:44 17 And the Defendants in that case filed a Rule  
02:03:48 18 12(b)(6) motion to dismiss which was granted by the  
02:03:51 19 District Court. The Federal Circuit then affirmed that  
02:03:55 20 motion.

02:03:56 21 So one important thing to note here at the start  
02:03:59 22 is that we have a similar posture here today with respect  
02:04:03 23 to the 12(b)(6) motion.

02:04:04 24 And another reason that the Beteiro case is  
02:04:08 25 particularly important here is because of how the Court

02:04:12 1 analyzed remarkably similar technology and similar use of  
02:04:16 2 that technology. And, specifically, not only were they  
02:04:20 3 talking about the usage of GPS devices, but they were also  
02:04:24 4 talking about the use of location information that comes  
02:04:27 5 from GPS devices.

02:04:28 6 So when the Federal Circuit affirmed what -- how  
02:04:33 7 did it reason that out? Well, at Alice Step 1, the Court  
02:04:37 8 agreed with the District Court that the claim was directed  
02:04:39 9 to an abstract idea.

02:04:41 10 And turning to Step 2, which is really the  
02:04:44 11 relevant portion of that case today, the Federal Circuit  
02:04:47 12 agreed that there was no inventive concept.

02:04:50 13 And another important thing to note about the  
02:04:52 14 Beteiro case is that in that case, the patent owner was  
02:04:55 15 arguing that there were factual disputes that were created  
02:04:59 16 by the pleadings in that case.

02:05:00 17 So the Federal Circuit had to address whether the  
02:05:04 18 pleading raised a sufficient factual issue. And they  
02:05:08 19 studied this closely, and they came up with an important  
02:05:11 20 analysis that I believe is relevant here.

02:05:13 21 So what did the Federal Circuit do? Well, they  
02:05:18 22 looked at the pleadings in connection with the claims and  
02:05:22 23 the specification of the patent. And first, they turned to  
02:05:25 24 the specification of the patent. And what they noticed  
02:05:28 25 there is that they found that only 15 lines out of 98



02:05:33 1 columns of specification was discussing GPS in the mobile  
02:05:37 2 device. And that was the very point that the Plaintiff was  
02:05:40 3 attempting to use as a hook to survive Step 2 on the  
02:05:45 4 pleadings.

02:05:46 5 And when -- specifically when the Federal Circuit  
02:05:48 6 studied those 15 lines, they found that how location  
02:05:51 7 information was being used by the GPS device was entirely  
02:05:55 8 conventional.

02:05:55 9 So I will explain in a moment why that is exactly  
02:06:00 10 the case here with respect to Claim 7.

02:06:02 11 Now, the Federal Circuit upon looking at the spec,  
02:06:06 12 they also looked at the pleadings, and what did they see in  
02:06:09 13 the pleadings? Well, they determined that the pleadings  
02:06:12 14 were entirely divorced from what was in the specification.

02:06:17 15 So the specification was entirely generic.

02:06:19 16 And what the Federal Circuit then said was that no  
02:06:23 17 amount of creative pleading could save the claim where they  
02:06:27 18 were divorced from the specification. And that's important  
02:06:30 19 here because we would urge the Court to do a similar  
02:06:34 20 analysis of the pleadings that we have in this case. And  
02:06:36 21 we are confident today that these pleadings are untethered  
02:06:40 22 from the claim, they're untethered from the specification,  
02:06:43 23 and ultimately, they do nothing more than teach a  
02:06:45 24 conventional and well-understood use of information.

02:06:48 25 So what did the Federal Circuit hold? Well, they

02:06:52 1 found that there were no plausible allegations that the  
02:06:55 2 claimed GPS was anything other than conventional, and they  
02:06:58 3 found that the complaint did not raise a factual dispute.

02:07:01 4 So two important takeaways from Beteiro. The  
02:07:06 5 first takeaway is that when the Federal Circuit looked at  
02:07:09 6 the pleadings, the claims, and the GPS technology, they  
02:07:12 7 concluded that the use of location information that comes  
02:07:16 8 from a GPS device is well-understood, routine, and  
02:07:19 9 conventional under Step 2.

02:07:21 10 So this is certainly a market shift in how courts  
02:07:28 11 analyze 101 and specifically applied to claims that  
02:07:32 12 involved --

02:07:33 13 THE COURT: So it -- did that case hold that if  
02:07:37 14 you use an internal GPS, that can never qualify as an  
02:07:40 15 inventive concept?

02:07:41 16 MS. DEER: Not necessarily that it can never  
02:07:43 17 qualify as an inventive concept, Your Honor, but it --  
02:07:48 18 rather, I'm saying that the Court held that where the  
02:07:50 19 specification discloses nothing other than a mere  
02:07:54 20 conventional use of conventional technology, in that case,  
02:07:57 21 the claim would not be eligible under Step 2.

02:08:00 22 THE COURT: Okay. So why is it important for us  
02:08:03 23 here specific to this case?

02:08:07 24 MS. DEER: Specific to this case, there are two  
02:08:09 25 reasons. First of all, because we have analogous

02:08:11 1 technology. This claim is involving a GPS device that's  
02:08:14 2 doing nothing more than its conventional use.

02:08:16 3 But the other important reason in the Beteiro case  
02:08:18 4 is that the Court set forth an analysis of what should be  
02:08:22 5 done when you have a Plaintiff who's alleging that there's  
02:08:26 6 a factual dispute from the pleadings.

02:08:28 7 So in that case, Beteiro specifically said that  
02:08:31 8 when the assertions in the complaint are not taught by the  
02:08:35 9 asserted patent, a District Court is not prevented from  
02:08:38 10 granting a motion to dismiss. And that is why this case is  
02:08:42 11 particularly important today.

02:08:44 12 THE COURT: So how did it change the law then?

02:08:46 13 MS. DEER: Well, Your Honor, it changed -- it  
02:08:49 14 changed the law with respect to first explaining that you  
02:08:53 15 can't simply tack on a GPS device to a claim and have that  
02:08:57 16 be the hook for an inventive concept for Step 2.

02:09:01 17 And it further changed the law because it set  
02:09:03 18 forth this idea that you must compare the allegations that  
02:09:06 19 are in a complaint to what is disclosed in the patent, and  
02:09:11 20 if there's a divorce between those two concepts, then  
02:09:14 21 creative pleading should not be taken as true and bar the  
02:09:19 22 granting of a motion to dismiss.

02:09:20 23 So there are a lot of parallels that can be drawn  
02:09:24 24 from the Federal Circuit opinion in Beteiro and what we  
02:09:27 25 have before us today with respect to this motion to

02:09:30 1 dismiss.

02:09:30 2 And, again, first, we have the use of GPS in both  
02:09:33 3 cases, and there's a parallel with respect to Rule  
02:09:39 4 12(b)(6).

02:09:40 5 And then furthermore, in Beteiro, the use of GPS  
02:09:43 6 described in the specification in Beteiro was involving a  
02:09:46 7 claim from 2002. And here, as a factual similarity, the  
02:09:52 8 patent at issue in this case also has a 2002 priority date.

02:09:56 9 So as Beteiro counsels, I'll go into exactly what  
02:10:02 10 the asserted patent teaches here, and then we can discuss  
02:10:08 11 the intrinsic record before turning to Fall Line's  
02:10:10 12 allegations.

02:10:10 13 So if I can get the slides.

02:10:13 14 I'll just move forward.

02:10:22 15 So what -- what claim -- if you turn to Claim 7,  
02:10:25 16 Your Honor, Element [d] in Claim 7 is the only element of  
02:10:30 17 this claim that uses the GPS device in any way. And this  
02:10:33 18 is now up on the screen here.

02:10:34 19 So I've highlighted Element [d]. And, in other  
02:10:37 20 words, all that is happening in Element [d] is that you're  
02:10:40 21 using location information that comes from a GPS device,  
02:10:45 22 which is exactly a conventional usage, and then responding  
02:10:48 23 to the questionnaire that has been created in prior steps  
02:10:51 24 of the claim with that GPS information.

02:10:55 25 And I will submit to the Court that this use of

02:10:58 1 GPS in the context of the claim is nothing more than  
02:11:01 2 automating human activity. So whereas previously, a human  
02:11:05 3 would sit there and type in a location or write in a  
02:11:09 4 location in response to a questionnaire, in Claim 7, we can  
02:11:12 5 see, with the use of the GPS device, the GPS device is  
02:11:18 6 going to respond on behalf of the human.

02:11:20 7 And you don't need to take my word for it, Your  
02:11:23 8 Honor, you can take the applicant's word for it.

02:11:25 9 So on the next slide, please.

02:11:27 10 I'm showing on the right side of the screen the  
02:11:29 11 two portions of the specification of the '748 patent that  
02:11:32 12 discuss the use of GPS. And in both of these places in the  
02:11:35 13 specification, you can see that what is being done with  
02:11:38 14 this GPS information is that the information is collected,  
02:11:43 15 and then entered automatically into the questionnaire  
02:11:48 16 rather than having it be entered manually.

02:11:51 17 So, again, this is just a conventional use of GPS,  
02:11:55 18 and it's very similar to the Beteiro case where location  
02:11:58 19 information was being used for a conventional purpose,  
02:12:02 20 which in that case, it was information about a location  
02:12:05 21 associated with a bet that was being sent with a betting  
02:12:09 22 message to determine if the bet was allowed or not based on  
02:12:12 23 location.

02:12:13 24 So now that we've seen the specification of the  
02:12:17 25 '748 patent, I'll just want to quickly draw another

02:12:20 1 parallel to the Beteiro case and show you part of the  
02:12:22 2 specification of that case on the next slide, please.

02:12:24 3 And here, this is what the Federal Circuit was  
02:12:29 4 reviewing in Beteiro, and the spec here says -- which is  
02:12:34 5 remarkably similar to what we just saw in the prior screen,  
02:12:38 6 that the GPS device 20J is automatically transmitting  
02:12:42 7 position data as part of a message.

02:12:43 8 So, again, when we go back to Beteiro, what stands  
02:12:47 9 out here is that the Federal Circuit was noting not only  
02:12:50 10 what was taught in the specification but perhaps more  
02:12:52 11 importantly, what is not taught. And what's not taught  
02:12:56 12 here is anything that is more than something conventional,  
02:13:02 13 routine, and well-understood with respect to GPS usage of a  
02:13:07 14 GPS device and location information.

02:13:09 15 So now that we've seen the claim and the  
02:13:13 16 specification here, Your Honor, I think we can turn to Fall  
02:13:16 17 Line's pleading to understand what is happening there.

02:13:19 18 So on the next screen, I have shown -- sorry,  
02:13:23 19 Jennifer, the two screens. Thank you.

02:13:29 20 On this screen, I've shown the operative paragraph  
02:13:31 21 of Plaintiff's complaint, and here are -- annotated are the  
02:13:35 22 two alleged unconventional uses of the integrated GPS  
02:13:40 23 technology.

02:13:41 24 So we can see that they allege first that the  
02:13:43 25 questionnaire is customized based on the usage of the GPS

02:13:48 1 device; and, second, that new responses are created in  
02:13:51 2 response to the GPS device.

02:13:54 3 So here's an important point, Your Honor, and I'll  
02:13:57 4 explain that neither of these allegedly unconventional uses  
02:14:00 5 that are currently on the screen are -- find any footing  
02:14:05 6 within the claim or the specification of the patent.

02:14:07 7 So ultimately, these two statements are nothing  
02:14:10 8 more than creative pleading, which the Federal Circuit in  
02:14:13 9 Beteiro said was insufficient.

02:14:15 10 So turning to the first allegation, again, this  
02:14:20 11 says -- alleges that it is unconventional to use the GPS  
02:14:24 12 device to customize the questionnaire. So let's compare  
02:14:27 13 this to the claim in the next slide, please.

02:14:29 14 Now, allow me to draw a few observations for you,  
02:14:36 15 Your Honor. And the first observation here is that --

02:14:38 16 THE COURT: Ms. Deer, could I ask you -- I'm  
02:14:40 17 sorry, just please slow down just a little for me.

02:14:43 18 MS. DEER: Thank you, Your Honor, I will do that.

02:14:46 19 THE COURT: Thank you.

02:14:46 20 MS. DEER: The first observation here is that when  
02:14:48 21 we look at Element [d], we can see that, again, this is the  
02:14:51 22 only element that is using GPS for any operation.

02:14:58 23 So Element [d] involves executing the  
02:15:00 24 questionnaire by using the GPS device to collect location  
02:15:04 25 information and then send it back.

02:15:06 1 So what's missing in Element [d]? Well, what's  
02:15:09 2 missing in Element [d] is that there's nothing here that  
02:15:12 3 refers to customizing a questionnaire. So whereas Fall  
02:15:16 4 Line's pleading says that it's unconventional for a GPS  
02:15:20 5 unit to customize a questionnaire, when we look at the  
02:15:23 6 claim, the only element that has anything to do with a GPS  
02:15:26 7 device is not to customize but rather to respond.

02:15:30 8 Now, is there any part of the claim that refers to  
02:15:33 9 customization of a questionnaire? And, yes, there is, Your  
02:15:38 10 Honor. And the only place in this claim that talks about  
02:15:41 11 customizing is 7[a]. And Fall Line might potentially point  
02:15:45 12 to this as footing for its allegation, but I'm going to  
02:15:48 13 look at that more closely and explain why that does not  
02:15:52 14 provide footing for their pleading.

02:15:54 15 So in Element 7[a], you can see that this is  
02:15:58 16 designing a questionnaire, and it does say that the  
02:16:01 17 questionnaire is customized for a particular location.  
02:16:06 18 But, again, here what does Element 7[a] not say? And it  
02:16:09 19 does not say that it uses GPS in any form or fashion to  
02:16:14 20 customize the questionnaire.

02:16:17 21 So I'm going to point to a part of the  
02:16:19 22 specification that explains what this means on the next  
02:16:23 23 slide, please.

02:16:24 24 So here is an example, Your Honor, which tells us  
02:16:26 25 what they're talking about here. And you can see in the



02:16:30 1 top portion of the specification on the right side of the  
02:16:33 2 screen, they're talking about prior to a trip to the  
02:16:35 3 restaurant, an employee of the client restaurant develops a  
02:16:39 4 questionnaire and then enters it on the web. So you have a  
02:16:43 5 client restaurant, you have an employee, and they're  
02:16:46 6 developing a questionnaire.

02:16:47 7 Well, who would they be developing the  
02:16:49 8 questionnaire for? They're developing it for their  
02:16:52 9 restaurant. So that is what is being specified here when  
02:16:56 10 it says for a particular location.

02:16:58 11 So if the employee, for example, works for, you  
02:17:02 12 know, Joe's Barbecue Shack, they're developing a  
02:17:06 13 questionnaire for Joe's Barbecue Shack, and that's how you  
02:17:09 14 can reconcile this language of customized for a particular  
02:17:13 15 location.

02:17:13 16 Now, where does the GPS device fit in? As  
02:17:17 17 discussed previously and as shown in this second part of  
02:17:21 18 the specification and the paragraph following, starting at  
02:17:23 19 Line 55, we can see that this gives us the answer.

02:17:26 20 So whereas the first part that I've indicated in  
02:17:28 21 orange is merely talking about designing a questionnaire,  
02:17:32 22 this second part of the specification example in blue shows  
02:17:36 23 that the GPS unit again is used to respond to the  
02:17:40 24 questionnaire.

02:17:40 25 So these are two different steps, and the GPS

02:17:44 1 receiver comes into play at this response step.

02:17:47 2 In short, Your Honor, Element 7[a], to the extent  
02:17:51 3 that Fall Line points to this as a ground for their  
02:17:55 4 pleading, is a red herring that is unrelated to the use of  
02:17:59 5 a GPS device.

02:17:59 6 So now that we've looked at the claims and we've  
02:18:01 7 looked at the specification, turning back once more to the  
02:18:04 8 pleading, Your Honor, the pleading says that it was  
02:18:08 9 unconventional to use GPS for the purpose of customizing a  
02:18:12 10 questionnaire, but we've seen the patent, and we know that  
02:18:14 11 the GPS device is never used to customize or generate or  
02:18:19 12 develop or design the questionnaire.

02:18:21 13 So this is the similar type of thing that the  
02:18:24 14 Plaintiff in Beteiro tried to argue to save the claim. But  
02:18:27 15 here, the pleading is implausible because it's simply not  
02:18:31 16 grounded in the patent. And that is what the Federal  
02:18:34 17 Circuit was referring to when they said that no amount of  
02:18:37 18 creative pleading can save the patent. And that is why  
02:18:41 19 Beteiro, in particular, is important to taking a fresh look  
02:18:45 20 at this issue.

02:18:47 21 Now, let me turn to the second alleged  
02:18:49 22 unconventional use quickly. And in this -- next -- thank  
02:18:54 23 you very much.

02:18:54 24 In this, they -- Fall Line says that you can  
02:18:59 25 formulate new questions based on responses with GPS

02:19:02 1 information that you get.

02:19:04 2 So if that's the case, now, turning to the patent,  
02:19:07 3 what does the patent say? Well, we should be able to look  
02:19:10 4 to Claim 7 here and see an element that's after Element [d]  
02:19:14 5 where the claim says you're going to send back new  
02:19:17 6 questions that were formulated based on what you get from  
02:19:20 7 the GPS device.

02:19:21 8 Well, what happens when you -- we actually look at  
02:19:25 9 the claim is that the claim doesn't say that. Element [e],  
02:19:28 10 which follows the GPS step at [d], says you transfer back  
02:19:31 11 the responses.

02:19:32 12 And then if we look at Element [f], it says that  
02:19:35 13 you make those available via the Internet.

02:19:38 14 So put simply, there's no element in this claim  
02:19:40 15 that has anything to do with sending back refined questions  
02:19:46 16 or revised questions based on any input that you received  
02:19:49 17 before from the GPS device.

02:19:50 18 It's simply not in the claim. And, again, we can  
02:19:54 19 see here that Fall Line's second allegation that I've  
02:19:58 20 highlighted in green is making an allegation that is not  
02:20:01 21 tethered to the claim. And, indeed, it's not tethered to  
02:20:05 22 the specification either.

02:20:06 23 So if we turn to the specification, as we've seen  
02:20:09 24 from the two high-level references to the GPS, there's  
02:20:12 25 nothing in there that speaks to refining or revising

02:20:16 1 questions based on GPS.

02:20:17 2 So in sum, Your Honor, Beteiro counsels a fresh  
02:20:21 3 look at this, given that the Federal Circuit said in a  
02:20:26 4 similar posture that the use of location information from a  
02:20:29 5 GPS device is well-understood and conventional.

02:20:32 6 So here we can see Element [d] is the only part of  
02:20:36 7 the claim that uses the GPS device, and the only way it  
02:20:40 8 does -- does so is what the Federal Circuit said is  
02:20:43 9 well-understood and conventional.

02:20:45 10 So, obviously, Beteiro didn't address the two  
02:20:49 11 specific allegations in our complaint that we have here.  
02:20:51 12 But as to those, as we've explained, they are untethered to  
02:20:55 13 the claims, they're untethered to the specification, and,  
02:20:59 14 therefore, they're tantamount to what the Federal Circuit  
02:21:00 15 was describing as creative pleading.

02:21:02 16 Furthermore, there is nothing that Fall Line can  
02:21:07 17 do to amend in this case because any amendment would be  
02:21:11 18 futile. And why I say that is because they can't change  
02:21:14 19 their claims. Fall Line cannot change their specification.  
02:21:18 20 And when they're confined to the claims in the four corners  
02:21:20 21 of the patent, there's nothing that they can put in their  
02:21:23 22 complaint that would not be creative pleading.

02:21:25 23 So, therefore, Claim 7 should be found ineligible.  
02:21:32 24 And 7-Eleven respectfully requests that the motion to  
02:21:38 25 dismiss be granted without leave to amend.

02:21:40 1 Thank you.

02:21:41 2 THE COURT: Thank you, Ms. Deer.

02:21:52 3 MR. MUELLER: Your Honor, on behalf of Best Buy,  
02:21:54 4 we adopt and agree with everything that Ms. Deer said. But  
02:21:58 5 I wanted to just provide a little bit more of an expansive  
02:22:01 6 answer on your question.

02:22:03 7 In the Beteiro case, beginning on Page 14, it says  
02:22:07 8 that the question of Step 2 of an inventive concept is a  
02:22:13 9 question of law that may be informed by underlying factual  
02:22:17 10 determinations. And I believe your question was whether a  
02:22:19 11 GPS could ever be an inventive concept.

02:22:22 12 And what Beteiro says also on Page 14 --

02:22:26 13 THE COURT: Well, my question is whether that's  
02:22:28 14 what that case said. I don't think that's what it said,  
02:22:31 15 but --

02:22:31 16 MR. MUELLER: Okay. You're correct. So what that  
02:22:34 17 case -- it did not say that, that it could never be. What  
02:22:38 18 it said on Page 14 is in that case, there's no plausible  
02:22:42 19 non-conclusory allegation that the claimed GPS is anything  
02:22:46 20 other than part of, as the District Court put it, a set of  
02:22:50 21 generic computer components.

02:22:51 22 And the factual underpinnings of that finding  
02:22:54 23 continue on Page 15 of Beteiro where it says: Nowhere does  
02:22:57 24 the specification describe any difference between how GPS  
02:23:02 25 would be equipped on a mobile phone and how it would be

02:23:06 1 equipped on any other -- any of the other described  
02:23:08 2 conventional computers.

02:23:09 3 So there, as here, there's nothing in the  
02:23:13 4 specification that puts GPS in a different position than  
02:23:18 5 its use as an ordinary conventional tool.

02:23:22 6 Thank you, Your Honor.

02:23:22 7 THE COURT: Thank you, Mr. Mueller.

02:23:25 8 MS. HASHEM: Good afternoon, Your Honor.

02:23:34 9 THE COURT: Good afternoon.

02:23:35 10 MS. HASHEM: AutoZone joins in and adopts the  
02:23:40 11 arguments presented by 7-Eleven and Best Buy, and similarly  
02:23:41 12 requests that this Court find the '748 patent invalid under  
02:23:45 13 Section 101, and, therefore, dismiss all claims against  
02:23:47 14 AutoZone with prejudice.

02:23:49 15 THE COURT: All right. Thank you, Ms. Hashem.

02:23:53 16 All right. Mr. Antonelli, I think you're up now.

02:23:56 17 MR. ANTONELLI: Your Honor, we have a few  
02:24:08 18 presentations --

02:24:10 19 THE COURT: Okay. Yes, of course.

02:24:11 20 MR. ANTONELLI: Can I hand them up?

02:24:13 21 THE COURT: Yes. Thank you.

02:24:47 22 MR. ANTONELLI: Your Honor, I may be having a  
02:25:15 23 technical problem with the display. Would it be okay if I  
02:25:18 24 just referred to the slides --

02:25:18 25 THE COURT: Oh, of course.

02:25:20 1 MR. ANTONELLI: -- by page number?

02:25:21 2 THE COURT: Yes. I have it in front of me.

02:25:24 3 MR. ANTONELLI: Okay. I will do it that way.

02:25:26 4 So just starting out at Page 3, Slide No. 3, just  
02:25:36 5 conveniently, we chose the same color coding for the two  
02:25:41 6 inventive concepts. There are two, indeed, and other ones  
02:25:44 7 that we've alleged in our complaint, but these are the two  
02:25:48 8 we focused in on on our opposition to the motion to  
02:25:53 9 dismiss, and we did so for good reason.

02:25:55 10 The reason we focused on these two inventive  
02:25:58 11 concepts are these are the identical inventive concepts  
02:26:02 12 that this Court had already ruled were plausibly pleaded in  
02:26:07 13 the prior Fall Line case. And that's on the next slide,  
02:26:10 14 Slide 4. And we've attached that order as an exhibit to  
02:26:15 15 our opposition.

02:26:15 16 So at the pleading stage, this Court already found  
02:26:21 17 these -- that we had said enough about the use of a GPS  
02:26:28 18 that was alleged to be inventive and that that was enough  
02:26:31 19 to survive on the pleadings.

02:26:34 20 I remember this even came up in front of you, Your  
02:26:39 21 Honor, however many years ago this was that we argued this  
02:26:43 22 before, the issue of it's not enough -- I think in the  
02:26:46 23 Court's opinion we were asked a lot of questions about  
02:26:49 24 this, like, just an integrated GPS on its own, is that  
02:26:52 25 enough? And there were -- there were already some cases

02:26:54 1 that suggested that wasn't enough. And I think the Court  
02:26:56 2 had concerns that that might not be enough.

02:27:00 3 But in its ruling, the Court said that Fall Line  
02:27:03 4 had gone beyond alleging merely integrating a GPS unit was  
02:27:09 5 an inventive concept. We've gone beyond that to allege two  
02:27:13 6 specific uses of that integrated GPS, and it was those uses  
02:27:19 7 of the integrated GPS that were inventive.

02:27:23 8 The other important history on this is we even  
02:27:32 9 went further on this issue in front of Your Honor in the  
02:27:35 10 prior case, and we went all the way to the summary judgment  
02:27:39 11 stage and got very close to trial.

02:27:40 12 And on summary judgment, there were cross-motions  
02:27:42 13 for summary judgment on this. There were expert reports,  
02:27:44 14 motions to strike expert reports, and so forth. We've  
02:27:47 15 included as evidence in our opposition our expert report,  
02:27:51 16 some, you know, 80 pages analyzing everything that the  
02:27:54 17 other side could throw at us, and putting in evidence from  
02:27:57 18 our expert explaining why that wasn't enough to make out a  
02:28:01 19 defense.

02:28:01 20 The Court on those summary judgment motions found  
02:28:05 21 two things. One, we could survive the summary judgment  
02:28:10 22 challenge that was brought by the other side, not only  
02:28:14 23 because they had some serious problems with the extent to  
02:28:19 24 which they met their burden, but also independently because  
02:28:23 25 we had sufficient evidence, which we largely pointed to our



02:28:27 1 expert report. That evidence was sufficient to get past  
02:28:31 2 summary judgment. And then, in fact, the Court actually  
02:28:33 3 granted summary judgment in our favor, I think largely  
02:28:36 4 because of the other side's defaults.

02:28:39 5 But the point I want to make is that the survival  
02:28:41 6 of the summary judgment motion, the Court was clear, we had  
02:28:45 7 sufficient evidence -- that was an independent ground to  
02:28:49 8 survive summary judgment.

02:28:50 9 So we're in a situation where we've got two  
02:28:52 10 inventive concepts that are in our complaint. Now, of  
02:28:55 11 course, I put these inventive concepts into our complaint  
02:28:58 12 given this history. And these inventive concepts survived  
02:29:02 13 the motion to dismiss. The Court found they were plausibly  
02:29:06 14 pleaded, and they had sufficient evidence to go to a jury.

02:29:10 15 So that brings us to this point, which is how do I  
02:29:16 16 lose on a motion to dismiss now on a case where I've  
02:29:20 17 survived summary judgment?

02:29:21 18 THE COURT: Because the law has changed.

02:29:23 19 MR. ANTONELLI: That's the only way I can lose is  
02:29:26 20 if the law has changed. It hasn't.

02:29:29 21 Beteiro did not change the law. I mean, I read  
02:29:36 22 the opening brief as essentially saying that this was kind  
02:29:39 23 of a new categorical rule that any use of a GPS can't  
02:29:44 24 amount to an inventive concept. But the Defendants have  
02:29:50 25 backed off of that, or clarified what their position was,

02:29:54 1 at least in their reply brief, and they made clear that  
02:29:57 2 they were not taking the position that no use of an  
02:30:03 3 integrated GPS could ever be inventive. That is not their  
02:30:09 4 position.

02:30:10 5 So that's not a category that's foreclosed by law.  
02:30:12 6 And we are alleging uses of an integrated GPS that we are  
02:30:16 7 alleging are inventive and that the Court previously  
02:30:19 8 credited as being inventive.

02:30:20 9 So given that, I don't -- if that's the correct  
02:30:26 10 understanding of Beteiro that it doesn't have this  
02:30:28 11 categorical change in law, then I don't know how their  
02:30:31 12 motion to dismiss could get off the ground, because we  
02:30:36 13 think we are in that category. And there are at least,  
02:30:41 14 Defendants will concede, some possible inventive uses in  
02:30:44 15 that category. And we're alleging that our uses are  
02:30:47 16 inventive, and we have evidence that we've put in that is  
02:30:50 17 essentially ignored by the Defendants. They ignore our  
02:30:55 18 expert report. They don't have a word to say about it in  
02:30:58 19 their briefing.

02:30:59 20 And so we have a very, very strong case in support  
02:31:02 21 of those inventive concepts, enough to get to a jury,  
02:31:06 22 enough to certainly survive on the pleadings.

02:31:11 23 So Slide -- I've moved to Slide 9, sorry. I  
02:31:18 24 haven't been announcing these.

02:31:20 25 Slide 8 talks a little about what the Defendants'

02:31:22 1 position is and their concession that they're not saying at  
02:31:25 2 least that there's this radical change in law --  
02:31:28 3 categorical change in law. And I think that's fatal to  
02:31:31 4 their -- to their motion because this case is nothing like  
02:31:34 5 Beteiro. If all we're doing is just comparing facts --  
02:31:38 6 facts and cases and which ones are we more like, Slide 9  
02:31:42 7 summarizes what Beteiro was all about and what the  
02:31:44 8 allegations were in there.

02:31:46 9 So there was a lot of discussion, I think, in the  
02:31:48 10 presentation that the Court just saw about what was going  
02:31:50 11 on in Beteiro. But the heart of Beteiro, the argument that  
02:31:55 12 was made by the Plaintiff there was I've got an integrated  
02:31:59 13 GPS. Integrated GPS, that's enough. And that's the same  
02:32:04 14 thing this Court dealt with four or five years ago,  
02:32:07 15 whenever it was, when the Court on the existing law, you  
02:32:11 16 know, expressed some skepticism that an integrated GPS was  
02:32:15 17 enough, given the state of law, but ruled that we were  
02:32:19 18 alleging more than just an integrated GPS. We were  
02:32:21 19 alleging certain uses of an integrated GPS as being  
02:32:27 20 inventive.

02:32:27 21 So the bulk of Beteiro is simply about is an  
02:32:31 22 integrated GPS enough to be inventive? And that's where in  
02:32:35 23 Beteiro the Court's looking at the spec and saying, well,  
02:32:39 24 if integrating a GPS was a technical problem that needed to  
02:32:42 25 be solved, you would expect more disclosure in the spec,

02:32:44 1 and that's why this -- the fact that this spec doesn't  
02:32:47 2 have that disclosure tells you something about the  
02:32:50 3 plausibility of whether just an -- just integrating a GPS  
02:32:55 4 can be enough.

02:32:55 5 But Beteiro did not announce a new rule of law.  
02:33:01 6 So the Court asked counsel for Defendants, you know, what  
02:33:05 7 was this new question of law? And I think what I heard in  
02:33:10 8 the presentation was that Beteiro changed the law by saying  
02:33:13 9 that whatever you're alleging is -- to be the inventive  
02:33:20 10 concept, that that must be disclosed in the spec of the --  
02:33:24 11 of the patent. That was a -- I think a part of how the  
02:33:29 12 Defendants characterized Beteiro.

02:33:30 13 And I do not believe Beteiro changed the law in  
02:33:34 14 that manner.

02:33:35 15 So the sort of background on this, when we were  
02:33:37 16 together before in the prior case, was the Cellspin case.  
02:33:43 17 And Cellspin was an important case that made very clear,  
02:33:46 18 addressed that issue squarely, and said that it was not  
02:33:50 19 required, that you do not have to have the inventive  
02:33:57 20 concepts described in the spec.

02:33:58 21 So in particular, in the Cellspin case, which is  
02:34:03 22 927 F.3d 1306, and in particular at Pages 1317 to 1318, the  
02:34:10 23 Federal Circuit said this: While we do not read Aatrix to  
02:34:19 24 say that any allegations about inventiveness, wholly  
02:34:19 25 divorced from the claims or the specification, defeats a

02:34:24 1 motion to dismiss, plausible and specific factual  
02:34:26 2 allegation that aspects of the claims are inventive are  
02:34:31 3 sufficient. As long as what makes the claims inventive is  
02:34:35 4 recite -- sorry. As long as what makes the claims  
02:34:39 5 inventive is recited by the claims, the specification  
02:34:43 6 not -- need not expressly list all the reasons why this  
02:34:46 7 claim structure is unconventional.

02:34:47 8 And if Beteiro was changing that law and saying  
02:34:53 9 that you had to find teachings in the specification about  
02:34:55 10 that, you would have expected to see that.

02:34:58 11 I read Beteiro's focus on the spec as essentially  
02:35:03 12 evidentiary for why it's not -- it's inconsistent to  
02:35:07 13 believe that this technical issue of how you would  
02:35:10 14 integrate a GPS could be an inventive thing when there's no  
02:35:14 15 disclosure about that in the spec, not a rule that any  
02:35:19 16 inventive concept that you're going to allege must -- must  
02:35:21 17 be disclosed in the spec.

02:35:25 18 The idea that there was a change in law being made  
02:35:29 19 like that was not there at all. In fact, in Beteiro, the  
02:35:32 20 Federal Circuit expressly distinguishes Cellspin, talks  
02:35:35 21 about Cellspin, and says, yeah, yeah, we're not saying  
02:35:38 22 we're changing Cellspin. This case is not like Cellspin  
02:35:43 23 and distinguishes it. And I'll touch on that in a moment.

02:35:46 24 So there -- there isn't this big change in law in  
02:35:49 25 Beteiro. It's certainly not a change in law that says it

02:35:53 1 has to be in the spec. I don't even think that was really  
02:35:56 2 the focus of the argument in the briefing that was  
02:35:59 3 submitted by the -- by the Defendants on this issue.

02:36:02 4 But in any event, the key in Beteiro was the only  
02:36:07 5 thing that was at issue was an allegation by the Plaintiffs  
02:36:10 6 that what was inventive was an integrated GPS, and then one  
02:36:14 7 other thing, which was use it in the context of gaming.  
02:36:19 8 And that's on Page 9.

02:36:20 9 This is how the Federal Circuit presented the  
02:36:23 10 issues. And just saying to use it in this overall context  
02:36:27 11 somewhere doesn't really say much at all. That's not an  
02:36:30 12 inventive concept.

02:36:30 13 So in Beteiro, those are at Pages 1357 to '58 is  
02:36:38 14 where that discussion is.

02:36:39 15 So I'm going to make the same argument I made  
02:36:46 16 before, four or five years ago, is this case is like  
02:36:48 17 Cellspin. Factual disputes about whether something is  
02:36:53 18 inventive -- this is on Page 10 of my -- Slide 10 -- are  
02:36:58 19 enough to survive a motion to dismiss.

02:37:00 20 Page 11 shows a little bit about what was at issue  
02:37:03 21 in Cellspin, right? There was, again, just a very basic  
02:37:07 22 abstract idea of taking -- collecting information,  
02:37:10 23 publishing information, kind of a similar abstract idea to  
02:37:12 24 our abstract idea or what has been alleged to be the  
02:37:15 25 abstract idea here.

02:37:16 1 And what they said in Cellspin is, like, no, look,  
02:37:19 2 we have this idea that we're going to distribute the steps  
02:37:22 3 between different devices and have certain protocols that  
02:37:25 4 we use to talk to them, so that when you take the picture,  
02:37:28 5 instead of having to have your own built-in WiFi chip,  
02:37:32 6 instead, you'll piggyback on the WiFi in your phone and  
02:37:35 7 that's what you'll use to get it up to the Internet. It's  
02:37:39 8 like that simple.

02:37:39 9 And that arrangement of -- that use of  
02:37:41 10 conventional components, the camera and the cell phone with  
02:37:45 11 the WiFi chip, putting them into that arrangement and using  
02:37:49 12 them in that way was plausibly alleged to be inventive.  
02:37:53 13 And that's exactly what we're doing, right?

02:37:55 14 So our allegation is you take the GPS and you use  
02:37:58 15 it in certain combinations, in certain ways, and that's an  
02:38:02 16 inventive thing. And we've backed that up by -- like, an  
02:38:08 17 in-depth evidentiary expert report that was sufficient to  
02:38:12 18 win the day at the summary judgment stage.

02:38:14 19 So lastly on Page 12, it's just the citation and  
02:38:24 20 quote from Beteiro where they're distinguishing Cellspin.  
02:38:28 21 And it's like, yeah, we're not like Cellspin because there,  
02:38:31 22 they had enough. They actually alleged a use of these  
02:38:34 23 conventional components, the same kind of use that we, Fall  
02:38:38 24 Line, alleged here.

02:38:39 25 So I think Defendants in their presentation today

02:38:41 1 have recognized some of the problems with I think their --  
02:38:45 2 what they presented in their original briefs, because we  
02:38:49 3 heard a brand new thread to the argument which is that this  
02:38:52 4 stuff that I'm alleging as inventive concepts is not found  
02:38:55 5 in Claim 7. It's not tethered to Claim 7. And I don't see  
02:39:00 6 any of that discussion in their briefing.

02:39:03 7 I think there was a one-off reference to something  
02:39:06 8 not captured by the claims somewhere towards the end of the  
02:39:09 9 opening brief, but this discussion that this stuff was not  
02:39:13 10 in the claims is all new, Your Honor.

02:39:14 11 And it's not true. It appears to be based on some  
02:39:21 12 kind of claim construction that's inconsistent with the  
02:39:23 13 claim constructions that the Court has previously adopted.

02:39:27 14 Just looking at the second inventive concept as an  
02:39:33 15 example, this is the one that says what's inventive -- the  
02:39:39 16 inventive use of the GPS in this particular environment  
02:39:42 17 back in the day when this was invented, networks not being  
02:39:46 18 reliable, handheld devices being, you know, very  
02:39:49 19 low-powered, poor quality things, Palm Pilot days, it's  
02:39:54 20 what our, you know, priority date goes back to.

02:39:56 21 What our inventive concept was -- the second one  
02:40:01 22 is, you know, the idea that you're going to use the GPS to  
02:40:06 23 collect location information, send that off to the server  
02:40:09 24 side, right? Then the server is going to be the one that  
02:40:12 25 generates questions, customizes the questionnaire, creates



02:40:17 1 additional questions that will be based on those GPS  
02:40:19 2 coordinates, and then those can be transmitted back to the  
02:40:22 3 handheld device for answers.

02:40:23 4 That was kind of the inventive -- big picture, the  
02:40:28 5 Inventive Concept No. 2, right?

02:40:30 6 That's right out of Claim 7. I mean, the  
02:40:33 7 structure of Claim 7 is a server handheld structure. And  
02:40:39 8 there are certain steps that have to happen on the server  
02:40:42 9 and certain steps that have to happen on the handheld  
02:40:45 10 mobile device.

02:40:46 11 So my presentation doesn't have a copy of Claim 7,  
02:40:52 12 but there's a -- there's a copy of Claim 7, for example, at  
02:40:55 13 Page 5 of Defendants' presentation, if the Court has it.

02:41:00 14 And Steps [a] and [b] are server-side steps where  
02:41:06 15 you are doing the step of designing the questionnaire that  
02:41:09 16 has to be -- that has to be a customized questionnaire, and  
02:41:14 17 transmitting it to the phone side or the loosely networked  
02:41:18 18 computer side.

02:41:18 19 Steps [c] and [d] and [e] are steps where that  
02:41:24 20 questionnaire is executed on the phone side. Responses are  
02:41:28 21 collected. The initial questions about GPS information,  
02:41:32 22 location information, those responses are collected using  
02:41:35 23 the GPS aspects of it.

02:41:39 24 And then Steps [e] and [f] are the steps where the  
02:41:43 25 responses get transmitted back and then made available over

02:41:45 1 the Internet. Those are the back to the server side. And  
02:41:48 2 it's this spreading of the process and distributing it  
02:41:51 3 appropriately between the server and the client, which is  
02:41:54 4 this -- all what's involved in this inventive concept that  
02:41:57 5 was the second inventive concept that the Court found to be  
02:42:00 6 previously plausibly pled.

02:42:03 7 So I'm not sure why the Defendants think that, for  
02:42:09 8 example, Step [a] doesn't matter to this. It could be an  
02:42:12 9 argument that, like, maybe Step [a] has to happen first  
02:42:17 10 before you use the GPS coordinates, use the GPS device, but  
02:42:21 11 that's like -- that's been, like, well hashed over in claim  
02:42:28 12 construction in the past, right? So we've got -- we've got  
02:42:29 13 claim constructions that, remember, don't require these  
02:42:31 14 steps to happen in absolute order. They can overlap.

02:42:35 15 So you can have a question generated from the  
02:42:37 16 server side that says: Tell me your location. Right? And  
02:42:39 17 then the phone side can then execute that question and send  
02:42:45 18 back the -- using the GPS coordinates, send back the  
02:42:49 19 location.

02:42:50 20 Then on the server side, you can send another  
02:42:53 21 question saying, okay, well, here's some restaurants you  
02:42:55 22 can choose from or some locations you can choose from that  
02:42:58 23 are near your GPS location. That's a second question.  
02:43:01 24 That can then be responded to, processed, transferred back,  
02:43:04 25 and so forth.

02:43:04 1 And so the overall process of this is that's how  
02:43:07 2 the questionnaire becomes customized. I mean, we have  
02:43:10 3 claim constructions already in prior cases agreed to in --  
02:43:14 4 in other cases. We haven't had claim construction in this  
02:43:16 5 case yet, but I should at least get the benefit at this  
02:43:19 6 stage of whatever claim constructions we had in the past  
02:43:22 7 that make clear that -- that what the location -- the  
02:43:28 8 information you're going to get is the information from the  
02:43:30 9 GPS device. It's got to be the location of where that GPS  
02:43:33 10 device, which is, you know, going to be pretty much the  
02:43:36 11 person carrying the GPS device around. Like, that was a  
02:43:38 12 claim construction dispute that we had and that we  
02:43:41 13 prevailed upon -- on.

02:43:43 14 So that -- this claim does -- is tied throughout.  
02:43:47 15 It's the overall architecture of this claim that is tied to  
02:43:50 16 the inventive concept that we pleaded.

02:43:52 17 So it's -- I think these are new arguments that  
02:43:59 18 are being made on all these issues, but it -- and so it's  
02:44:03 19 not really fair, but it's in there. It's in these claims,  
02:44:06 20 these inventive concepts, and they're tied -- the inventive  
02:44:09 21 concepts we've alleged are tied to the claims. That was a  
02:44:12 22 necessary finding that was made last time. We argued that  
02:44:14 23 last time. We argued that it was in the claims.

02:44:16 24 I think the only thing I remember arguing last  
02:44:19 25 time was I thought maybe I didn't have enough detail in the

02:44:21 1 complaint, and I told the Court if I didn't have enough  
02:44:24 2 detail in the complaint -- you know, I think I've got  
02:44:26 3 enough, but you should grant leave to amend if I need to  
02:44:29 4 add a little bit more to put this in.

02:44:31 5 I'll say the same thing on that front again. For  
02:44:35 6 any reason -- and this is my last slide -- the Court  
02:44:38 7 believes that we don't have enough, I think the law is  
02:44:41 8 clear that the kind of factual allegations that go to  
02:44:45 9 Step 2 of Alice are the kind of things that leave should  
02:44:48 10 be -- should be granted freely on. So if there's any  
02:44:51 11 concern about that, I would ask that we be granted leave to  
02:44:55 12 amend.

02:44:55 13 Thank you, Your Honor.

02:44:56 14 THE COURT: Thank you.

02:45:08 15 MS. DEER: Hi.

02:45:09 16 THE COURT: Ms. Deer?

02:45:10 17 MS. DEER: A few points in rebuttal, Your Honor.

02:45:12 18 First, my colleague, Mr. Antonelli, referenced the  
02:45:18 19 motion to dismiss and the motion for summary judgment. And  
02:45:20 20 a couple of things to note there.

02:45:22 21 First, the Court had taken as true the allegations  
02:45:26 22 in Plaintiff's complaint. Here, we're saying that Beteiro  
02:45:30 23 and the analysis set forth in Beteiro that the Federal  
02:45:33 24 Circuit underwent advises taking a new look at this.

02:45:37 25 Now, second, with respect to the motion for

02:45:41 1 summary judgment stage, Footnote 18 of the Court's order  
02:45:45 2 indicates that the two inventive concepts that Fall Line is  
02:45:50 3 raising today were not actually addressed by the Defendants  
02:45:54 4 at summary judgment.

02:45:55 5 So, again, I think that this counsels a new look  
02:45:58 6 at these allegations in the pleadings.

02:46:01 7 Now, second, counsel for Fall Line made a few  
02:46:05 8 statements about Beteiro and why it is not a change in the  
02:46:08 9 law. So I would like to further clarify why Beteiro is a  
02:46:12 10 change in the law.

02:46:13 11 First, it, again, discusses how we should look at  
02:46:22 12 GPS. And, specifically, Beteiro is a change in GPS law  
02:46:26 13 because it's making clear that you can't simply tack a GPS  
02:46:30 14 limitation onto a claim and make it eligible.

02:46:32 15 So it's a change in the law as it relates to these  
02:46:36 16 facts here and indicates that these allegations about an  
02:46:39 17 integrated GPS performing a customary function that is  
02:46:44 18 well-known and well-understood should not be credited.

02:46:47 19 And, second, Beteiro tells us what inferences we  
02:46:51 20 can draw from the way a specification is written. And  
02:46:55 21 here, we see that Fall Line's allegations are not the type  
02:46:58 22 of allegations that can defeat a motion to dismiss. And  
02:47:03 23 specifically, they are the type of creative pleading that  
02:47:07 24 the Federal Circuit said in Beteiro was not something that  
02:47:10 25 should be taken as plausible.

02:47:11 1 Now, I'd like to address the Cellspin case that  
02:47:18 2 Mr. Antonelli referenced. And, in fact, Cellspin is  
02:47:22 3 addressed by the Court in Beteiro. So at Page 1359 of the  
02:47:28 4 Beteiro opinion, Beteiro specifically takes on Cellspin,  
02:47:33 5 and they note that -- like counsel for Fall Line noted,  
02:47:39 6 they said that Cellspin was sufficient to preclude  
02:47:42 7 dismissal because it had specific factual allegations of  
02:47:49 8 why the inventions were not conventional. And, of course,  
02:47:52 9 that's the part that was quoted.

02:47:53 10 However, what Fall Line did not mention was -- and  
02:47:57 11 what the Court in Beteiro did discuss was that these  
02:48:00 12 allegations were -- and I'll quote from the Federal  
02:48:04 13 Circuit, Beteiro opinion at 1359: These were rooting these  
02:48:08 14 allegations in the patent-in-suit.

02:48:10 15 And they say: Beteiro's allegations, by  
02:48:13 16 comparison, are neither specifically tied to the claimed  
02:48:17 17 invention, nor, as we have explained, plausible in light of  
02:48:21 18 the specification's description of generic technology.

02:48:23 19 And I think that's really important here, Your  
02:48:25 20 Honor, is -- and why that Cellspin shouldn't be credited on  
02:48:29 21 behalf of Fall Line because, again -- and like I just  
02:48:32 22 mentioned it's this representing an analysis that the Court  
02:48:35 23 is suggesting we should undergo, we should look to the  
02:48:38 24 specification and see if the specification describes  
02:48:41 25 something that's conventional.

02:48:43 1 And, again, as I explained when I was up at the  
02:48:46 2 podium the first time, the specification here in the '748  
02:48:50 3 patent does nothing more than explain a conventional use of  
02:48:54 4 GPS.

02:48:55 5 And also, Fall Line's allegations are entirely  
02:48:58 6 divorced and untethered from both the claim of the '748  
02:49:03 7 patent and the specification of the '748 patent.

02:49:05 8 Now, I'll also note that the Berkheimer versus HP  
02:49:13 9 case, which is a 2018 Federal Circuit case that was recited  
02:49:16 10 in 7-Eleven's opening brief, also states that any purported  
02:49:20 11 improvement must be in the claims.

02:49:24 12 So this is established that there has to be some  
02:49:26 13 kind of tie between the allegations and the -- the claims  
02:49:32 14 themselves.

02:49:32 15 Now, I'd also like to address -- Mr. Antonelli  
02:49:37 16 referenced that Beteiro is not applicable here because it  
02:49:39 17 was related to gaming.

02:49:41 18 Now, we're not trying to say that the factual  
02:49:43 19 similarities between these two cases are the reason that  
02:49:45 20 Your Honor should be focused on Beteiro, but rather because  
02:49:50 21 there are factual similarities between Beteiro and the case  
02:49:54 22 here, the legal conclusion that is drawn from Beteiro is  
02:49:56 23 the relevant part. And, again, that legal conclusion was  
02:49:59 24 that when you do nothing more than explain conventional  
02:50:05 25 well-understood usage of location information in the

02:50:08 1 specification, just because it comes from a GPS device  
02:50:12 2 doesn't somehow make it more than that.

02:50:16 3 And that's exactly why we're putting this forward  
02:50:18 4 as a change in the law with respect to GPS.

02:50:20 5 Further, I will address -- I believe Mr. Antonelli  
02:50:25 6 said that this was inconsistent with the Court's claim  
02:50:30 7 construction in a prior case. And I'll address that, as  
02:50:32 8 well, and note that when I had gone through the complaint  
02:50:36 9 in my opening presentation, I had discussed that Step [a]  
02:50:42 10 is a designing of the questionnaire step. And then later  
02:50:45 11 in the claim, we can see that the only place in the claim  
02:50:47 12 where GPS is referenced is Step [d], and that's an --  
02:50:51 13 that's an execution step of the questionnaire.

02:50:53 14 And, in fact, the Court, on Page 14 of its claim  
02:50:58 15 construction order in the Zoe's Kitchens case, says that  
02:51:04 16 the plain language of the claim recites that GPS does not  
02:51:06 17 provide the location until the questionnaire is executed.

02:51:12 18 So, again, I'll note that this -- the language of  
02:51:17 19 the claim is that the GPS is involved in not the designing  
02:51:22 20 but in the execution step of the claim, and, therefore,  
02:51:25 21 Fall Line's allegations and this kind of idea that they  
02:51:29 22 have that the questions are refined based on a back and  
02:51:34 23 forth is not necessarily grounded and in our opinion is not  
02:51:40 24 grounded at all in the claim language or in the  
02:51:42 25 specification.



02:51:42 1 Now, additionally, I'll discuss this kind of  
02:51:48 2 process between the server and the client. Fall Line is  
02:51:51 3 pointing to functions that are kind of conventional  
02:51:55 4 functional language. It's result-focused functional  
02:51:59 5 language.

02:52:00 6 So what he's talking about is, again, not  
02:52:03 7 something that can help us here with Step 2. And  
02:52:06 8 furthermore, I'll note that counsel for Fall Line did not  
02:52:10 9 point to anything in the specification that supported  
02:52:15 10 his -- his idea of -- of this allegation.

02:52:17 11 Now, I'll also go to his reference that Defendants  
02:52:24 12 are ignoring his expert testimony from the motion for  
02:52:30 13 summary judgment stage. And to that, again, I think we  
02:52:33 14 just have to take this back to the claim and the intrinsic  
02:52:36 15 record here.

02:52:38 16 So it's -- this matter is not about an expert  
02:52:41 17 supporting things that aren't tethered to the patents  
02:52:43 18 themselves. And all of the discussion about what the  
02:52:46 19 expert says or does not say ultimately cannot change what  
02:52:51 20 is in the claims.

02:52:53 21 And, again, Beteiro tells us that as of 2002,  
02:52:57 22 these types of conventional uses of information from a GPS  
02:53:01 23 device where you're simply automatically responding,  
02:53:04 24 whether it be a message related to bedding or whether it be  
02:53:07 25 a response to a questionnaire, these uses are well known

02:53:10 1 and conventional.

02:53:12 2 Now, regardless of what Fall Line's expert was  
02:53:15 3 trying to say, again, we've now heard from the Federal  
02:53:18 4 Circuit on this, and that has settled that issue.

02:53:22 5 Finally, I believe that counsel for Fall Line -- I  
02:53:32 6 think we can just point to what counsel for Fall Line  
02:53:35 7 didn't say. And, again, he didn't say where in the  
02:53:39 8 specification this teaches customizing a questionnaire  
02:53:42 9 based on a GPS device. He didn't say where in the  
02:53:45 10 specification this idea of refining questionnaires based on  
02:53:49 11 GPS information is found. And in addition, he didn't get  
02:53:55 12 up here and explain that -- why that first element doesn't  
02:54:01 13 say using a GPS device. It simply is not in the language  
02:54:06 14 of Element 7[a] that a GPS device is present.

02:54:10 15 And, again, I'll reference the Court back to that  
02:54:13 16 Column 10 example in the specification about the mystery  
02:54:17 17 shopper and the restaurant where the mystery shopper shows  
02:54:21 18 up in the parking lot of the restaurant and then the  
02:54:25 19 questionnaire is initiated. And then at that point, GPS  
02:54:28 20 information is automatically sent in response to the  
02:54:30 21 questionnaire.

02:54:30 22 So with that, I believe I'm finished, unless the  
02:54:34 23 Court has any questions.

02:54:35 24 THE COURT: All right. I don't. Thank you,  
02:54:36 25 Ms. Deer.

02:54:37 1 MS. DEER: Thank you.

02:54:37 2 THE COURT: Anything else?

02:54:38 3 MR. ANTONELLI: May I say two more things, Your  
02:54:40 4 Honor?

02:54:40 5 THE COURT: Yes.

02:54:41 6 MR. ANTONELLI: I want to just point out a little  
02:54:44 7 more of the linkage in Claim 7 between the various steps to  
02:54:48 8 show that it's all involved.

02:54:49 9 Again, if Your Honor has the claim language maybe  
02:54:54 10 in Slide 12, for example, of the Defendants' presentation,  
02:54:58 11 you'll note that Step [a] says designing a questionnaire.  
02:55:01 12 And that questionnaire has to include at least one question  
02:55:05 13 customized for a particular location. So that means that  
02:55:08 14 it's going to be somehow designed to be customized for a  
02:55:11 15 location.

02:55:11 16 And the questionnaire -- Step [a] also says that  
02:55:16 17 the questionnaire has to have at least one question that  
02:55:21 18 requests location identifying information. So we got a  
02:55:24 19 questionnaire that has to have at least one question that  
02:55:28 20 requests location identifying information.

02:55:30 21 And then in Step [d], we have using -- while the  
02:55:38 22 transferred questionnaire is executing, you use the GPS to  
02:55:42 23 automatically provide said location identifying  
02:55:47 24 information.

02:55:47 25 So one of the questions in the questionnaire that

02:55:49 1 comes from Step [a] says: Tell me your location.

02:55:54 2 It has to be in there.

02:55:55 3 Then in Step [d], it says: Use the GPS to answer  
02:55:59 4 that question.

02:56:00 5 You then provide that response, and then the  
02:56:03 6 questionnaire has to become customized based on your  
02:56:08 7 location.

02:56:08 8 So the only way this argument works that  
02:56:10 9 Defendants are making that Step [a] has nothing to do with  
02:56:13 10 this is if you're going to somehow interpret these claims  
02:56:17 11 in a way that just ignores all of that and says, no, no,  
02:56:20 12 Step [a] has to be done first. You have to design the  
02:56:22 13 questionnaire -- has to be designed, customized for a  
02:56:26 14 particular location before you receive any GPS coordinates.  
02:56:29 15 And that -- that way of interpreting the claim doesn't make  
02:56:32 16 any sense, just given the plain language. And the Court  
02:56:34 17 has already rejected that interpretation. I mean, that has  
02:56:38 18 already been rejected in past claim construction orders,  
02:56:41 19 Your Honor.

02:56:41 20 The only other thing I wanted to say is with  
02:56:44 21 respect to this Footnote 18 issue in the summary judgment  
02:56:49 22 opinion, I agree it's -- I think it's worded a little  
02:56:52 23 funny, I'm sorry to say, Your Honor. But the footnote says  
02:56:56 24 that we also -- even if Defendants had -- had -- even if  
02:57:02 25 McDonald's had not met its -- had met its burden,

02:57:05 1 Defendants would still win because they haven't -- they  
02:57:08 2 haven't rebutted -- the inventive concepts went unrebutted  
02:57:12 3 or something along those lines.

02:57:13 4 But given the context, I don't think that was a  
02:57:15 5 ruling that just merely McDonald's defaulted. It was an  
02:57:21 6 additional ruling that said even if McDonald's had met its  
02:57:24 7 burden, I still win on summary judgment because then we  
02:57:27 8 would go to sort of the Step 2 of the summary judgment  
02:57:30 9 process. Do I have enough evidence on my side to raise a  
02:57:33 10 genuine issue? And then the Court pointed to -- cited  
02:57:36 11 various things after that, including my expert report to  
02:57:38 12 show that I have enough evidence.

02:57:40 13 So I think the clear import of that is it's a  
02:57:43 14 second reason that I win. And the importance of that is it  
02:57:48 15 shows that not -- not only that I win on summary judgment,  
02:57:51 16 but it shows that I -- based on a default by the other  
02:57:54 17 side, but I won on summary judgment because I have  
02:57:58 18 sufficient evidence. If I can win on -- if I can survive  
02:57:59 19 summary judgment because I have sufficient evidence, then  
02:58:01 20 how could I possibly lose at the pleading stage?

02:58:05 21 Thank you, Your Honor.

02:58:06 22 THE COURT: Thank you Mr. Antonelli.

02:58:08 23 Ms. Deer, it's your motion. If you want to have  
02:58:10 24 the last word, you can have the last word.

02:58:10 25 MS. DEER: Yes, Your Honor. Thank you. I

02:58:10 1 appreciate that.

02:58:11 2 Just two very quick points. First, with respect  
02:58:14 3 to the last point that Mr. Antonelli made about the summary  
02:58:17 4 judgment, I'd like to note that Defendants in that case  
02:58:19 5 could not rebut Mr. Antonelli's experts because in that  
02:58:23 6 case, the Defendant expert reports were stricken.

02:58:26 7 And then the second just closing point that I  
02:58:28 8 would like to make is with respect to Mr. Antonelli's  
02:58:31 9 statements about Claim Element 7[a]. Again, I think he's  
02:58:37 10 conflating these two elements. I think the plain language  
02:58:39 11 of the claim supports Defendants' position, and I also  
02:58:42 12 think that Column 10 of the specification with the mystery  
02:58:45 13 shopper example clearly supports Defendants' position.

02:58:47 14 So there is no support within the patent itself  
02:58:51 15 for Mr. Antonelli's allegation with respect to that  
02:58:56 16 language in the claim.

02:58:56 17 Thank you, Your Honor.

02:58:57 18 THE COURT: Thank you, Ms. Deer.

02:58:58 19 Okay. Next motion?

02:59:03 20 Mr. Hutchins?

02:59:06 21 MR. HUTCHINS: Yes, Your Honor. And I represent  
02:59:11 22 the Aldi and Sprouts Defendants, and our motion was based  
02:59:16 23 on Iqbal and Twombly. And so the dispute between the  
02:59:18 24 parties is simply whether the complaint sets forth facts to  
02:59:22 25 plausibly support the claim of infringement.

02:59:24 1 Now, with respect to direct infringement, the  
02:59:31 2 Plaintiff points to Paragraph 11 of its complaint, and  
02:59:34 3 I'm -- when I say complaint, I'm referring to the Aldi and  
02:59:37 4 Sprouts complaints which are virtually identical. Aside  
02:59:42 5 from changing the names, I believe that of the other maybe  
02:59:46 6 dozens of Defendants also have Defendant-agnostic  
02:59:51 7 complaints.

02:59:51 8 But for our purposes here today, when I refer to  
02:59:55 9 the complaint, I'll be referring to the paragraphs in the  
02:59:58 10 Aldi and Sprouts complaints, which, again, are identical  
03:00:03 11 other than the names, for our purposes here today.

03:00:05 12 Now, the issue, Your Honor, is simple, and we  
03:00:09 13 submit with respect to direct infringement, this is not  
03:00:12 14 even a close call, is that Paragraph 11 does not set forth  
03:00:19 15 facts that could even possibly address the plausibility of  
03:00:23 16 whether the claim is met because the statement in Paragraph  
03:00:26 17 11 is divorced from what Claim 7 says. This is reminiscent  
03:00:32 18 of what you heard earlier today about there being a  
03:00:35 19 disconnect or an untethering between the pleadings and the  
03:00:39 20 claim.

03:00:39 21 You've seen Claim 7 earlier here today. I won't  
03:00:43 22 repeat it. Suffice it to say there's these six elements  
03:00:47 23 that require various specific things. You've got a  
03:00:50 24 questionnaire that's designed that has branching logic that  
03:00:54 25 requests a location. You have the questionnaire being

03:00:58 1 automatically transferred to a loosely networked computer  
03:01:03 2 that has an integral GPS. Then you've got the transferred  
03:01:10 3 questionnaire being executed on the loosely networked  
03:01:13 4 computer. You've got then the GPS being used to  
03:01:16 5 automatically provide location information as a response to  
03:01:18 6 the questionnaire. The responses have to be collected in  
03:01:25 7 realtime, and then the responses are automatically  
03:01:27 8 transferred to a central computer. And finally, the  
03:01:30 9 transferred responses are made available via the Internet.

03:01:33 10 Now, in contrast to those -- I paraphrase, but in  
03:01:36 11 contrast to those general requirements of Claim 7,  
03:01:39 12 Paragraph 11 simply states that the Defendants' mobile app,  
03:01:44 13 in conjunction with servers, quote, create and execute a  
03:01:50 14 location-specific questionnaire to collect responses from  
03:01:53 15 users, close quote.

03:01:55 16 That is the language that the Plaintiffs cite in  
03:01:58 17 their response to our motion, I believe, on Page 3 as  
03:02:02 18 providing plausible support for the claim of infringement,  
03:02:05 19 but that couldn't possibly be the case, Your Honor, simply  
03:02:09 20 because what I read to you from Paragraph 11 does not  
03:02:12 21 mention GPS, loose networks. And here I'm talking about  
03:02:16 22 how it does not mention the accused products having these  
03:02:20 23 features, allegedly. It doesn't mention loose networks,  
03:02:24 24 automatic transfer of the questionnaire, automatic transfer  
03:02:26 25 of the responses, or responses being made available over



03:02:29 1 the Internet.

03:02:30 2 So there are no facts that make it plausible that  
03:02:35 3 the accused products could possibly meet these required  
03:02:38 4 elements, and that simply is why the complaint fails under  
03:02:42 5 Iqbal and Twombly.

03:02:42 6 Now, in the response, Plaintiff has suggested that  
03:02:49 7 we were arguing that their infringement contentions must be  
03:02:53 8 included in the complaint. Well, we did not argue that.  
03:02:57 9 We don't dispute there are various ways a Plaintiff could  
03:03:01 10 meet the standards of Iqbal and Twombly. You wouldn't  
03:03:05 11 necessarily need a claim chart such as you would include in  
03:03:08 12 an infringement contention, although many Plaintiffs do use  
03:03:11 13 such a chart to meet the pleading standard.

03:03:13 14 But the complaint doesn't fail because it didn't  
03:03:16 15 include the infringement contentions. The complaint fails  
03:03:19 16 because Paragraph 11 fundamentally fails to allege the  
03:03:23 17 facts that would be needed for there to be a plausible  
03:03:26 18 claim of infringement with respect to Claim 7.

03:03:29 19 Now, that's important because without direct  
03:03:35 20 infringement, by definition, there can be no indirect  
03:03:39 21 infringement, namely, inducement of infringement or  
03:03:41 22 contributory infringement, by definition, nor could there  
03:03:45 23 be willful infringement. So this is a very fundamental  
03:03:49 24 issue with respect to Paragraph 11 and the disconnect that  
03:03:52 25 I submit is present with respect to Claim 7.

03:03:57 1 But I have a couple of additional points, and I'll  
03:03:59 2 be brief, that I want to make with respect to the indirect  
03:04:02 3 claims and the willfulness claims.

03:04:07 4 Now, we're all familiar with the general principle  
03:04:11 5 that when you're viewing the sufficiency of a complaint,  
03:04:13 6 you strip out the statements that are bare conclusions or  
03:04:16 7 simply recite the elements of a claim. And I raise this  
03:04:20 8 with respect to indirect infringement because I think  
03:04:22 9 that's what happened here.

03:04:23 10 I believe it's particularly apparent with respect  
03:04:26 11 to contributory infringement. The contributory  
03:04:31 12 infringement allegation in the complaint is in Paragraph  
03:04:34 13 17. That paragraph simply gives a bare recital of the  
03:04:40 14 elements of what contributory infringement would be without  
03:04:43 15 any factual underpinnings or support.

03:04:47 16 So, for instance, Paragraph 17 states, quote, the  
03:04:52 17 accused products have special features that are specially  
03:04:56 18 designed to be used in an infringing way and that have no  
03:05:00 19 substantial uses other than ones that infringe Claim 7 of  
03:05:05 20 the '748 patent, close quote.

03:05:07 21 Now, first, I'll note that these problems with the  
03:05:11 22 complaint compound upon each other because as I just got  
03:05:15 23 done explaining, there's no discussion in the complaint of  
03:05:18 24 any factual statements regarding what uses of the accused  
03:05:23 25 products could or couldn't infringe because there's no

03:05:25 1 discussion of the fundamental features of the claim.

03:05:28 2 But here, there's a reference to there being  
03:05:31 3 special features specially designed in the accused  
03:05:35 4 products. What's missing is any factual statement of what  
03:05:38 5 those special features are. By definition, we submit this  
03:05:44 6 is the prototypical example of simply stating the elements  
03:05:47 7 without requiring any factual underpinnings.

03:05:50 8 And in this regard, I'll note that this  
03:05:54 9 distinguishes this case, for instance, from some of the  
03:05:57 10 complaints that are cited by Plaintiffs in their motion,  
03:06:00 11 such as the Motiva case.

03:06:01 12 In the Motiva opinion, the Judge went out of his  
03:06:04 13 way to point out that the specific features that were --  
03:06:09 14 the same language appeared in Motiva, but the special  
03:06:12 15 features were defined -- were explained. Any such  
03:06:15 16 explanation is absent here, and that's why I suggest  
03:06:18 17 that -- that these are bare recitals of the elements  
03:06:21 18 without proper factual underpinning is particularly  
03:06:25 19 apparent with respect to contributory infringement.

03:06:28 20 Now, with respect to inducement of infringement,  
03:06:32 21 which is the other type of indirect infringement, there's  
03:06:36 22 an allegation that the -- that the Defendants, excuse me,  
03:06:41 23 have advertising or otherwise make statements to customers  
03:06:46 24 to use the product in an infringing matter -- manner.

03:06:49 25 There's no reference of any particular

03:06:54 1 advertisements or statements or instructions. It simply  
03:06:57 2 says you instruct your users to infringe. And in this  
03:07:03 3 regard, I believe the Stragent case, which Your Honor  
03:07:10 4 decided several years ago, with respect to the -- whether  
03:07:14 5 an indirect infringement claim, and particularly an  
03:07:17 6 inducement claim, is sufficient is pertinent.

03:07:22 7 And in that case, the Court held that the  
03:07:23 8 complaint was not sufficient. And one of the reasons it  
03:07:28 9 was not sufficient was because with respect to inducement  
03:07:30 10 of infringement, based on this concept of there being  
03:07:34 11 instructions, some unstated or unknown instructions to  
03:07:39 12 infringe, the Court held that the complaint has to allege,  
03:07:45 13 quote, how the instructions direct customers to use these  
03:07:49 14 products in an infringing manner.

03:07:53 15 And that concept of how the instructions direct  
03:07:57 16 customers to use those products in an infringing manner,  
03:07:59 17 and that's on Page -- \*9 of the Stragent opinion -- is  
03:08:07 18 entirely absent, we submit, from the inducement paragraph  
03:08:10 19 of the complaint, which is Paragraph 16.

03:08:13 20 Now, I'll turn very briefly to willful  
03:08:22 21 infringement, and this also has some pertinence to indirect  
03:08:26 22 infringement. In this case, there is not an allegation  
03:08:28 23 that the Defendants were aware of the complaint before the  
03:08:30 24 complaint was filed.

03:08:33 25 So there's no allegation that there were

03:08:35 1 discussions about the patent in advance and we -- the  
03:08:38 2 Defendants knew about the patent and acted despite their  
03:08:41 3 knowledge of the patent.

03:08:42 4 Rather, what is being pointed to by the Plaintiffs  
03:08:47 5 is a willful blindness theory, namely, there's an  
03:08:52 6 allegation that the Defendants were willfully blind to the  
03:08:56 7 patent and that in part undergirds the indirect  
03:09:03 8 infringement claims and it certainly undergirds the willful  
03:09:06 9 infringement claim.

03:09:06 10 The key languages in Paragraph 19 of the  
03:09:13 11 complaint, and the entirety of Paragraph 19 is, quote, on  
03:09:18 12 information and belief, Defendant has a policy or practice  
03:09:23 13 of not reviewing the patents of others, including  
03:09:27 14 instructing its employees to not review the patents of  
03:09:29 15 others, and thus has been willfully blind of Fall Line's  
03:09:34 16 patents.

03:09:34 17 And this language appears, I believe, in literally  
03:09:40 18 dozens -- verbatim -- in dozens of the complaints that  
03:09:46 19 Plaintiff has brought, namely, every Defendant purportedly  
03:09:52 20 instructs its employees to not review the patents of others  
03:09:55 21 on information and belief.

03:09:57 22 And let me pause a moment on information and  
03:09:59 23 belief because there's an important -- half of information  
03:10:01 24 and belief is information. When you make a statement on  
03:10:07 25 information and belief, we submit that you have to have

03:10:12 1 some information to inform the belief. Otherwise, it would  
03:10:17 2 simply be upon belief.

03:10:20 3 But it's upon information and belief. And what we  
03:10:24 4 submit is happening here is that there is no information  
03:10:27 5 provided that could possibly inform a belief that the  
03:10:32 6 Defendants, never mind coincidentally all of the dozens of  
03:10:39 7 Defendants that have been sued by Fall Line, has a policy  
03:10:42 8 of not reviewing the patents of others, including  
03:10:46 9 instructing its employees to not review the patents of  
03:10:49 10 others.

03:10:49 11 Now, many of the cases cited by both sides in  
03:10:50 12 these motions point out that plausibility is contextual.  
03:10:53 13 It depends on the context of the whole case. And that  
03:10:57 14 courts are encouraged to use their common sense.

03:11:01 15 Now, I am aware that language like this has been  
03:11:04 16 held to be sufficient -- for instance, against a large  
03:11:08 17 consumer electronics company, Sony, in the Motiva case.

03:11:13 18 Now, Aldi and Sprouts are grocery stores. And I  
03:11:17 19 submit that it pushes the limit too far to simply cut and  
03:11:23 20 paste this sentence in for which the -- the information  
03:11:27 21 that forms the belief is not stated and simply say that the  
03:11:31 22 Defendant has a policy or practice of instructing its  
03:11:34 23 employees to not review patents for grocery stores and have  
03:11:40 24 that be considered plausible.

03:11:41 25 If the Court applies its common sense and if the

03:11:44 1 Court considers this in context, I think it should be a  
03:11:48 2 signal that these complaints and allegations like this  
03:11:52 3 should not be Defendant-agnostic. It should matter who  
03:11:59 4 your Defendant is when you're alleging things that  
03:12:02 5 Defendant specifically was supposed to have done.

03:12:05 6 And here, it doesn't. And so for that reason,  
03:12:08 7 Your Honor, we respectfully submit that the statement in  
03:12:11 8 Paragraph 19, rather than being a sufficient factual  
03:12:15 9 statement of willful blindness, is instead an unsupported  
03:12:20 10 recitation of an element without factual support, similar  
03:12:25 11 to the way the allegation with respect to contributory  
03:12:28 12 infringement simply recites the elements of contributory  
03:12:32 13 infringement but puts no factual meat on the bone.

03:12:35 14 With that, Your Honor, I'll yield to my brother or  
03:12:38 15 sister counsel, or if you have any questions.

03:12:39 16 THE COURT: The only question I've got is on the  
03:12:41 17 willful blindness issue. What would you say the very best  
03:12:44 18 case for Aldi and Sprouts would be?

03:12:50 19 MR. HUTCHINS: Well, so I don't have a case that  
03:12:54 20 says that that language is insufficient because that  
03:12:58 21 language was copied from the Motiva complaint.

03:13:01 22 Now, I will note that with respect to statements  
03:13:06 23 on information and belief, there are examples of courts  
03:13:09 24 that have looked behind what -- looked behind that  
03:13:13 25 statement to see if it has any factual support.

03:13:17 1 So in a slightly different context, for instance,  
03:13:22 2 in the Nu-Look -- I think it was the Nu-Look case that we  
03:13:28 3 cite -- Nu-You -- excuse me, Nu-You Technologies case we  
03:13:29 4 cite. That was out of the Northern District of Texas. In  
03:13:31 5 that case, when the Court was considering the sufficiency  
03:13:34 6 of the indirect infringement and the direct infringement  
03:13:39 7 allegations, it considered various statements that were  
03:13:42 8 made upon -- factual-type statements made upon information  
03:13:48 9 and belief.

03:13:48 10 But there, the Court looked to see whether the  
03:13:51 11 information was provided and whether it actually could  
03:13:55 12 plausibly support the belief. And there, in certain  
03:13:59 13 instances, it said no, which was -- which if that type of  
03:14:03 14 analysis is applied to this language here, particularly in  
03:14:09 15 the context of this case now that we're talking about these  
03:14:12 16 various complaints being made and my client's particular  
03:14:18 17 instant about grocery stores and you're considering the  
03:14:22 18 plausibility in that context, I would cite to that as a  
03:14:26 19 counterpoint to a different approach where the Court simply  
03:14:29 20 looks at the statement and says upon information and  
03:14:31 21 belief, it seems like a factual statement, my analysis  
03:14:34 22 stops there because that's a properly pled fact.

03:14:36 23 If Your Honor were to take that approach, then,  
03:14:39 24 yes, by definition, this would be a properly pled fact. We  
03:14:42 25 simply suggest that that's not the approach you should take



03:14:45 1 when you're looking at the broader context of this case and  
03:14:48 2 how plausible or not this allegation is.

03:14:52 3 THE COURT: Thank you, Mr. Hutchins.

03:14:55 4 MR. HUTCHINS: Thank you.

03:15:00 5 MR. FINDLAY: Your Honor, very briefly for Advance  
03:15:04 6 Auto and Advance Stores.

03:15:05 7 To answer your question, I would point the Court  
03:15:08 8 to the Dialect versus Bank of America case. It's  
03:15:13 9 2:24-CV-207 decided just back in December of '24 by, I  
03:15:17 10 believe, Judge Gilstrap, who was the same author as the  
03:15:20 11 Motiva case. But I would argue in that case, he granted  
03:15:23 12 the dismissal of the blind willfulness allegations. And I  
03:15:27 13 would submit that if you read that case, Judge, they had a  
03:15:30 14 lot more factual bases for their claims than what appears  
03:15:33 15 in Paragraph 19.

03:15:35 16 And as Mr. Hutchins said so eloquently and  
03:15:38 17 correctly, the paragraphs they were talking about,  
03:15:42 18 specifically Paragraphs 11, 17, 19, are identical amongst  
03:15:47 19 the complaints. They're Defendant-agnostic, as I think  
03:15:51 20 Mr. Hutchins said.

03:15:52 21 So unless the Court has anything else, I'll rely  
03:15:56 22 on his argument, and I'll turn it over to --

03:16:00 23 THE COURT: Thank you, Mr. Findlay.

03:16:02 24 Okay. All right. Ms. Price?

03:16:16 25 MS. PRICE: Good afternoon. I am going to address

03:16:19 1 these issues in a little bit of a different order --

03:16:22 2 THE COURT: That's fine.

03:16:22 3 MS. PRICE: -- than counsel. I'm going based on  
03:16:27 4 the briefing. So --

03:16:27 5 THE COURT: That's fine.

03:16:28 6 MS. PRICE: -- forgive me for that.

03:16:29 7 First, I'm going to discuss the direct  
03:16:32 8 infringement arguments.

03:16:34 9 Defendants argue, which was reiterated here today,  
03:16:37 10 that Fall Line -- Fall Line's complaint is not sufficient  
03:16:44 11 because it does not include factual information for every  
03:16:47 12 single element of Claim 7, similar to a claim chart.

03:16:53 13 However, in Opticurrent versus Power Integrations,  
03:17:02 14 which Aldi and Sprouts cite, Judge Gilstrap reminds us that  
03:17:06 15 Rule 8 simply requires a short and plain statement of the  
03:17:10 16 claim showing that the pleader is entitled to relief.  
03:17:13 17 Indeed, the local patent rules requiring infringement  
03:17:15 18 contentions would be superfluous if the federal rules  
03:17:18 19 required such an exhaustive pleading.

03:17:19 20 And in that case, Judge Gilstrap found that  
03:17:24 21 Opticurrent's complaint was sufficient because, one, it  
03:17:28 22 identified the asserted patent claim; two, described the  
03:17:33 23 technology covered by the patent; three, identified the  
03:17:36 24 infringing activity; four, identified the accused product;  
03:17:40 25 and, five, identified how the accused product infringes.

03:17:43 1 In that complaint, we have Paragraph 13, which  
03:17:50 2 shows the description of the technology covered by the  
03:17:53 3 patent in the Opticurrent complaint, namely, transistor  
03:17:57 4 switches used in semiconductor devices.

03:18:00 5 And below that in Paragraph 15, we have how the  
03:18:04 6 accused product infringes. The highlighting there is  
03:18:07 7 basically parroting of the claim language, but what the  
03:18:11 8 complaint adds is this key advantage of a lower amount of  
03:18:20 9 currently goods (sic) between the second and third  
03:18:21 10 terminal.

03:18:22 11 Comparing the Fall Line and Opticurrent  
03:18:25 12 complaints, as you can see, Fall Line included a much more  
03:18:27 13 fulsome description of the technology. For example, that  
03:18:32 14 it teaches a method -- a method, excuse me, for managing  
03:18:36 15 and collecting data from a remote computing device, the  
03:18:39 16 need to collect location-specific information, et cetera.

03:18:42 17 And, again, the Opticurrent complaint describes  
03:18:46 18 this technology as the transistor switches used in  
03:18:51 19 semiconductor devices and, again, discusses this minimal  
03:18:56 20 leakage advantage.

03:18:56 21 Another example of this is Fall Line's complaint  
03:19:02 22 is at least as detailed, if not more than Opticurrent's, on  
03:19:08 23 how the accused product infringes. Again, with  
03:19:11 24 Opticurrent's complaint, I have the claim language -- the  
03:19:14 25 parroted claim language highlighted and the addition of the

03:19:18 1 key advantage.

03:19:20 2 In contrast, I have as an example the Advance Auto  
03:19:26 3 Parts complaint where Fall Line accuses that the Advance  
03:19:31 4 Auto Parts's mobile app, working with its servers, not only  
03:19:35 5 creates but also executes a location-specific questionnaire  
03:19:39 6 and collects those responses from those -- the  
03:19:41 7 questionnaire from its users.

03:19:44 8 In spite of this, all the Defendants argue that  
03:19:53 9 they are unaware really of what the accused product is.  
03:19:56 10 Aldi and Sprouts's motions, they'll say something being  
03:19:59 11 referred to as the Aldi mobile app or the Sprouts mobile  
03:20:03 12 app. And similarly, Advance Auto talks about it doesn't  
03:20:09 13 know what Fall Line means by its servers, its  
03:20:12 14 questionnaires, or user responses as if it's unaware of how  
03:20:18 15 its app works.

03:20:18 16 So looking at a simple Google search, it is not  
03:20:23 17 like these parties have tons of mobile apps out there. If  
03:20:27 18 you google, for example, Aldi -- the Aldi mobile app, three  
03:20:33 19 things come up. You have the Aldi website, which links to  
03:20:36 20 this page that promotes the Aldi app, and then you have the  
03:20:43 21 Google Play and Apple App stores.

03:20:46 22 So moving to the indirect and willful infringement  
03:20:56 23 arguments, the Defendants argue that Fall Line has not  
03:21:00 24 adequately pleaded factual allegations for specific intent  
03:21:03 25 and knowledge of the indirect and willful infringement

03:21:08 1 arguments.

03:21:08 2 But as Defendants note, Fall Line did argue this  
03:21:16 3 policy or practice of not reviewing the patents of others  
03:21:19 4 and instructing its employees to not review the patents of  
03:21:22 5 others in its willful blindness allegations.

03:21:25 6 And I'd like to touch here on Defendants' counsel  
03:21:31 7 saying that this is just mere belief, but we're not talking  
03:21:35 8 about these, quote, grocery stores as a whole. We're  
03:21:39 9 talking about them specifically in the context of the  
03:21:43 10 technology being accused. They have IT people, they have  
03:21:48 11 specific technology employees within this company, and as  
03:21:54 12 the Lemley article that, excuse me, Fall Line cited  
03:21:59 13 suggests that everyone does this, the willful blindness of  
03:22:10 14 the patents of others in order to escape this knowledge  
03:22:14 15 requirement.

03:22:14 16 Moving on to the Motiva and Sony -- excuse me,  
03:22:22 17 Motiva versus Sony supports Fall Line that it has  
03:22:27 18 sufficiently pleaded knowledge. There, Judge Gilstrap  
03:22:32 19 stated either factual allegation, the existence of the  
03:22:35 20 policy or its implementation in the form of specific acts  
03:22:40 21 of willful blind conduct, is sufficient to state a claim at  
03:22:45 22 the pleading stage.

03:22:46 23 And as Defendant concedes, Fall Line's allegations  
03:22:50 24 are identical to those allegations in Motiva.

03:22:56 25 I'd also like to touch on this Dialect case that

03:23:00 1 was brought up. The pre-suit knowledge that was alleged in  
03:23:04 2 Dialect is completely different from the knowledge of  
03:23:07 3 willful blindness here.

03:23:09 4 In Dialect, the pre-suit knowledge was based on  
03:23:11 5 this presentation from a third party of a  
03:23:16 6 predecessor-in-interest to the patents and just is -- has  
03:23:20 7 nothing to do with this willfully blind policy that Fall  
03:23:23 8 Line has alleged here.

03:23:23 9 And moving on to the contributory infringement  
03:23:29 10 argument that is just specific to the Aldi and Sprouts  
03:23:34 11 motions, there, they argue that Fall Line did not identify  
03:23:39 12 this special feature in their complaint. However, as Fall  
03:23:45 13 Line noted in its opposition, it has sufficiently pleaded  
03:23:51 14 contributory infringement.

03:23:52 15 As Defendants' counsel conceded, we have our  
03:23:55 16 Paragraph 17 discussing the accused products having special  
03:23:58 17 features that are specifically designed to be used in an  
03:24:01 18 infringing way and have no substantial uses other than  
03:24:05 19 those that infringe.

03:24:08 20 In addition, it's clear that Fall Line is  
03:24:09 21 referring to this special feature of creating and executing  
03:24:13 22 a location-specific questionnaire to collect responses from  
03:24:16 23 users. That was referred to in Paragraph 17.

03:24:28 24 Your Honor, if the Court finds that Fall Line's  
03:24:31 25 claims are not adequately pleaded, Fall Line requests leave

03:24:35 1 to amend its complaint to address any deficiencies the  
03:24:37 2 Court finds, or, at minimum, incorporate its infringement  
03:24:39 3 contentions by reference.

03:24:40 4 Do you have any questions?

03:24:42 5 THE COURT: I don't. Thank you.

03:24:44 6 MS. PRICE: Thank you, Your Honor.

03:24:45 7 THE COURT: Thank you very much.

03:24:46 8 MR. HUTCHINS: Very briefly, Your Honor.

03:24:51 9 With respect to the Opticurrent case, both parties  
03:24:57 10 agree that it requires a factual statement of how the  
03:25:03 11 accused product infringes, and that is exactly what we  
03:25:06 12 submit is missing from Paragraph 11.

03:25:11 13 Counsel mentioned that you could possibly pull up  
03:25:16 14 some links on the Internet that would show examples of what  
03:25:21 15 the accused product might be. When I hear that, that's  
03:25:25 16 simply, to my ear, a statement of what could have been in  
03:25:29 17 the complaint but wasn't.

03:25:30 18 And on the very last point that was made about  
03:25:34 19 contributory infringement and how the special feature is a  
03:25:41 20 callback to the description of Paragraph 11, that feature  
03:25:47 21 cannot possibly be a special feature that can only infringe  
03:25:53 22 because, as we discussed and as Your Honor has seen here  
03:25:57 23 today, the statement in Paragraph 11 is not at all  
03:26:04 24 consonant with Claim 7 and the features that it requires.

03:26:08 25 I don't have anything else, Your Honor, and I

03:26:11 1 don't know if my other counsel has anything they want to  
03:26:14 2 add.

03:26:14 3 THE COURT: Mr. Findlay?

03:26:16 4 MR. FINDLAY: Nothing further, Your Honor.

03:26:19 5 THE COURT: Okay. All right.

03:26:21 6 MR. HUTCHINS: Thank you, Your Honor.

03:26:22 7 THE COURT: Ms. Price, anything else?

03:26:24 8 MS. PRICE: Thank you, Your Honor.

03:26:25 9 Just real quick on this Internet point that  
03:26:28 10 counsel brought up. The reason that Fall Line brought up  
03:26:31 11 the Internet in general was because this feigned ignorance  
03:26:37 12 of Defendants that it has no idea what could possibly be  
03:26:41 13 referred to as the Aldi app or the Sprouts apps just does  
03:26:44 14 not make sense to Fall Line.

03:26:46 15 It's clear that there are not hundreds of apps  
03:26:50 16 that these companies have. Again, a clear google search  
03:26:53 17 makes it clear to the public what Fall Line is referring to  
03:26:58 18 as the Aldi app, the Sprouts app, or the Advance Auto app.

03:27:06 19 THE COURT: Okay. Thank you.

03:27:07 20 Anything else?

03:27:08 21 MR. HUTCHINS: No, Your Honor.

03:27:09 22 THE COURT: All right. Good. So I think that  
03:27:10 23 covers everything, and you all have time remaining on the  
03:27:13 24 clock. So it's all to the good.

03:27:15 25 We've got -- I said this morning at a similar



03:27:23 1 hearing -- some of you were here for that -- that we've got  
03:27:27 2 a busy several weeks ahead of us, a couple of trials that  
03:27:32 3 are set. And so that will be somewhat distracting to us.  
03:27:39 4 But I'll look forward to getting an order out on these  
03:27:41 5 motions just as quickly as possible.

03:27:43 6 Is there anything else we need to discuss today  
03:27:45 7 before we adjourn?

03:27:47 8 MR. ANTONELLI: We have nothing further, Your  
03:27:48 9 Honor.

03:27:48 10 THE COURT: Anything?

03:27:49 11 MR. MUELLER: Nothing.

03:27:50 12 THE COURT: Okay. All right. Excellent  
03:27:51 13 presentations by everyone today. Thank you very much.

03:27:54 14 And we'll hope to get an order out as quickly as  
03:27:59 15 possible. Safe travels to everybody.

03:28:02 16 COURT SECURITY OFFICER: All rise.

03:28:02 17 (Hearing concluded 3:28 p.m.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes  
SHELLY HOLMES, CSR, TCRR  
CERTIFIED SHORTHAND REPORTER  
State of Texas No.: 7804  
Expiration Date: 10/31/2025

5/12/2025  
Date